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09/622,013	11/13/2000	Gerald M. Clement	207001	6625

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SUITE 4900  
CHICAGO, IL 60601-6780

EXAMINER

KRECK, JOHN J

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/622,013

Applicant(s)

CLEMENT, GERALD M.

Examiner

John Kreck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-21, 23-25 and 30 is/are pending in the application.
- 4a) Of the above claim(s) 30 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14 and 16 is/are allowed.
- 6) ☒ Claim(s) 17-21, 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

The amendment dated 10/6/03 has been entered.

Claim 30 remains withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Claim 30 was withdrawn as non-elected by original presentation in paper number 14. Because applicant did not distinctly and specifically point out any errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 17-19, 21, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, et al. (U.S. Patent number 5,865,564) in view of any one of Givens (U.S. Patent Number 4,890,569); Borgquist (U.S. Patent Number 4,807,405); or Parish (U.S. Patent Number 4,655,008).

Miller shows an elongate dike bladder comprising a tube closed at its ends and having a wall and a long axis between the ends; the tube formed to be flexible and water tight; and at least one port (fig. 4) for access to the interior of the bladder.

Miller fails to teach the pressure release valves in the wall of the bladder.

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It is well known and old when using inflatable bladders to place pressure release valves in the wall of the inflatable bladder. This is done to prevent rupture of the bladder (as shown by Parrish—see col. 3, lines 48-55 and by Givens—see col. 3, lines 34-39) or to simplify the deflation of the bladder (as shown by Borgquist—see col. 4, lines 40-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Miller to have a pressure release valve in the wall of the bladder, as called for in claim 17, in order to prevent rupture of the bladder, or to facilitate deflation.

Miller teaches the end folded and the sleeve as called for in claim 18.

Miller also teaches the membrane (32) as called for in claim 19.

Miller also teaches the membrane being perforated (col. 3, line 45) as called for in claim 21.

Miller also teaches the dike as called for in claim 24.

Miller also teaches the liquid as called for in claim 25.

2. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, et al. and Givens; Borgquist; or Parish as applied to claim 17 above, and further in view of Matsuoka, et al. (U.S. Patent Number 5,127,766)

The Miller reference fails to teach the pressure monitoring means.

The Matsuoka reference shows a similar bladder system which includes a pressure monitoring means selected to emit a signal if the pressure in the bladder falls

below a predetermined level. This is done to allow the pressure to be increased in order to prevent buckling of the bladder.

It would have been further obvious to one of ordinary skill in the art at the time of the invention to have further modified the Miller device (as modified above) to have included a pressure monitoring means selected to emit a signal if the pressure in the bladder falls below a predetermined level as called for in claim 23, in order to allow the pressure to be increased in order to prevent buckling of the bladder.

3. Claims 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins in view of any one of Givens (U.S. Patent Number 4,890,569); Borgquist (U.S. Patent Number 4,807,405); or Parish (U.S. Patent Number 4,655,008).

Jenkins shows an elongate dike bladder comprising a tube closed at its ends and having a wall and a long axis between the ends; the tube formed to be flexible and water tight; and at least one port (30a) for access to the interior of the bladder.

Jenkins fails to teach the pressure release valves in the wall of the bladder.

It is well known and old when using inflatable bladders to place pressure release valves in the wall of the inflatable bladder. This is done to prevent rupture of the bladder (as shown by Parrish—see col. 3, lines 48-55 and by Givens—see col. 3, lines 34-39) or to simplify the deflation of the bladder (as shown by Borgquist—see col. 4, lines 40-42).

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It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Jenkins to have a pressure release valve in the wall of the bladder, as called for in claim 17, in order to prevent rupture of the bladder, or to facilitate deflation.

Jenkins also shows the membrane (143, see figure 10) as called for in claim 19.

Jenkins also shows the solid membrane as called for in claim 20.

4. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, et al. in view of Matsuoka, et al. (U.S. Patent Number 5,127,766)

Miller shows an elongate dike bladder comprising a tube closed at its ends and having a wall and a long axis between the ends; the tube formed to be flexible and water tight; and at least one port (fig. 4) for access to the interior of the bladder.

The Miller reference fails to teach the pressure monitoring means.

The Matsuoka reference shows a similar bladder system which includes a pressure monitoring means selected to emit a signal if the pressure in the bladder falls below a predetermined level. This is done to allow the pressure to be increased in order to prevent buckling of the bladder.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Miller device to have included a pressure monitoring means selected to emit a signal if the pressure in the bladder falls below a predetermined level as called for in claim 29, in order to allow the pressure to be increased in order to prevent buckling of the bladder.

***Allowable Subject Matter***

1. Claims 1-14, and 16 are allowed.

***Response to Arguments***

2. Applicant's arguments concerning the pressure release valve or the sensor have been fully considered but they are not persuasive.

In response to applicant's argument that the Givens, Borquist, Parish, and Matsuoka references are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, each of the cited references are directed to fluid filled bladders, and problems such as high pressure, which may cause rupture; low pressure, which may cause buckling; or simplifying deflation. These are reasonably pertinent to the problems with which the applicant was concerned.

Applicant's assertions that the properties of gas and liquid are so fundamentally different that they would require fundamentally different treatment in inflatable tubes are not at all persuasive. It is agreed that gases are much more compressible than liquids, however this fact does not support applicant's assertion that "gases are particularly susceptible to great build-ups in pressure, particularly in the filling process". Gases and liquids are generally equally susceptible to pressure build up; see, for example "Fluid

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Power", page 6, under "FLUIDS"; where it is reported that one of the characteristics which is shared by liquids and gases is "Both readily transmit pressure". It is clear that liquids and gases are both susceptible to great build-ups in pressure; this is a well-known physical principle. A force acting on a tube filled with gas would result in the same internal pressure as an identical force on an identical tube filled with liquid; since pressure is defined as force per unit area, and forces must be balanced for a system to be in equilibrium.

Furthermore, two possible motivations were given for the use of release valves: the use of a release valve to simplify the deflation of the bladder is taught by Borgquist; it is clear that this has nothing to do with pressure build-up.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725. The examiner can normally be reached on M-F 5:30 am - 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703)872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-4177.



John Kreck  
Examiner  
Art Unit 3673

JJK  
November 18, 2003